

Summary of Pleading - 1

FILED 10/30/2007
HARVEY UNIVERSITY, City of Detroit Court
2007

John Cobb
Plaintiff,

vs.

Department of Administration and
The State of Montana
Defendant

) Cause No. CDV 2007-835-
)
)
)
)
) Complaint
)
)
)

1. John Cobb is a Montana citizen, taxpayer and Montana State Senator
2. That John Cobb is the attorney of record and is also the Plaintiff in this Complaint.
3. That Defendant, Department of State Administration is a Department of State Government within the State of Montana.

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FACTS

4. During the May 2007 Special Legislative Session, the Legislature enacted and the Governor signed HB 9. A True and correct copy of House Bill 9 is attached and incorporated herein as Exhibit A.

5. A portion of HB 9 became Section 6, Chapter 6, Special Laws of May 2007, which enacted 15-30-140 MCA, which provides for a tax credit for payment of residential property taxes for returns filed in 2008 on 2007 income.

6. Section 15-30-140(1)(a)(ii), MCA reads:

The department of administration shall certify to the budget director On August 1, 2007, the amount of unaudited general fund Revenue received in fiscal year 2007 as recorded when the fiscal year 2007 statewide accounting, budgeting, and human resources system records are closed in July 2007. General fund revenue is as recorded in the statewide accounting, budgeting, and human resources system using generally accepted accounting principles in accordance with 17-1-102 (2). If the unaudited general fund revenue received in fiscal year 2007 exceeds \$1,802,000,000 for each \$1,000.000 greater than \$1,802,000,000, the factor in subsection (1)(b)(i) must increase by 0.1 for tax year 2007 only.

7. The applicable portion of 17-1-102, MCA reads:

(2) The department shall prescribe and install a uniform accounting and reporting system for all state agencies and institutions, reporting the receipt, use, and disposition of all public money and property in accordance with generally accepted accounting principles.

8. On July 27, 2007 the Department of Administration Certified to the budget director the fiscal year 2007 General fund revenue. A true and correct copy of The certification is attached and incorporated herein as Exhibit B.

9. The certification states that the revenue

“includes an error that was discovered after the records were closed in July 2007” the certification further states that it is based on “assumptions underlying the estimates used to make the ‘official’ legislative general fund revenue estimates” and that the “amount differs from the unaudited

1 general fund revenue... due to different definitions of
2 revenue.”

- 3 10. That this certification was used to “trigger” the amount of tax credits to be
4 claimed on individual Income tax returns in fiscal 2008 for income for 2007.
5
- 6 11. That if the Department of Administration had Certified to the budget director
7 before August 1, 2007 the amount of unaudited general fund revenue received
8 in fiscal year 2007 as recorded when the fiscal year 2007 statewide accounting,
9 and human resources system records are closed in July 2007 using generally
10 accepted accounting principles in accordance with 17-1-102 (2) that the trigger
11 for tax credits would not have been met.
12
- 13 12. That an email from the State Accountant for the Department of Administration
14 to Terry Johnson, the Principal Fiscal Analyst for the Legislative Fiscal
15 Division shows that using generally accepted accounting principles that there
16 would be no tax credits. (See Exhibit C).
17
- 18 13. The certification differs from the requirements of 15-30-140(1)(a)(ii), MCA, in
19 two respects. First an error was recorded after the FY 2007 records were closed,
20 and second, the assumptions are based upon the 2007 Regular Session revenue
21 estimate instead of generally accepted accounting principles.
22
- 23 14. 15-30-140(1)(a)(ii) clearly states that the department shall certify “the amount
24 of unaudited general fund revenue received in fiscal year 2007 as recorded
25 when the fiscal year 2007 statewide accounting budgeting, and human
 resources system records are closed in July 2007. Fiscal year 2007 is the period

1 from July 1, 2006, to June 30, 2007. The certification specifically states that the
2 error correction was made after the records were closed. The error should not
3 have been recorded based in the statute 15-30-140(1)(a)(ii).
4

5 15. The Department based the certification on House Joint Resolution No. 2, the
6 Revenue Estimating Resolution, which it characterizes as the “official” basis of
7 the underlying assumptions. House Joint Resolution No. 2 died in House
8 Taxation Committee.
9

10 16. The House Joint Resolution No. 2, the Revenue Estimating Resolution provides
11 a tool for the Legislature to use in meeting its constitutional requirement for
12 establishing a balanced budget. It provides uniform assumptions for the
13 Legislature and executive agencies to estimate future revenue.
14

15 17. The Trigger in 15-30-140(1)(a)(ii), MCA provides

16 That “general fund revenue is as recorded in the Statewide accounting,
17 budgeting, and human resources using generally accepted accounting
Principles in accordance with 17-1-102(2).

18 No estimating is involved: the trigger amount is a fiscal yearend “snapshot”
19 of the amount of recorded state revenue using generally accepted
20 Accounting principles. If generally accepted Accounting principles are
21 used, then there was no Trigger for the tax credits.
22

23 CAUSE OF ACTION

24 18. Under the plain language of 15-30-140(1)(a)(ii) using generally
25 accepted accounting principles, the “trigger” for any tax credit
was not accomplished. The language is not ambiguous. The trigger

1 amount is the total revenue received in fiscal year 2007 that is
2 recorded to generally accepted accounting principles for records that
3 are closed in July 2007.

4 19. In reading a statute, a person does not look for legislative intent in
5 anything other than the words of the statute unless the words are ambiguous. In
6 construing a statute, a court must find legislative intent from the plain meaning
7 by reasonably and logically interpreting the statute as a whole without omitting
8 or inserting anything or determining intent from a reading of only a part of the
9 statute. See Gaub v. Milbank Ins. Co., 220 Mt 424, 715 P2d 443, 43 St. Rep.
10 497 (1986).

11 20. The certification differs from the requirements of 15-30-140(1)(a) (ii) in two
12 respects. First an error was recorded after the FY 2007 records were closed, and
13 second, the assumptions are based upon the 2007 Regular Session revenue
14 estimates instead of generally accepted accounting principles. Neither
15 difference is subject to ambiguity. Regarding the recording of the error, 15-30-
16 140 (1)(a)(ii) clearly states that the department shall certify “the amount of
17 unaudited general fund revenue received in fiscal year 2007 as recorded when
18 the fiscal year 2007 statewide accounting, budgeting, and human resources
19 system records are closed in July 2007. Fiscally year 2007 is the period from
20 July 1, 2006, to June 30, 2007.” The certification specifically states that the
21 error correction was made after the records were closed. No error should have
22 been recorded in the certification.

23 21. The second difference is no less ambiguous. The Department based the
24 certification on house Joint Resolution No. 2, the Revenue Estimating
25 Resolution, which it characterizes as the official basis of the underlying

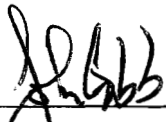
1 assumptions. House Joint Resolution No. 2 died in the House Taxation
2 Committee. The resolution provides a tool for the Legislature to use in meeting
3 its constitutional requirement for establishing a balanced budget. It provides
4 uniform assumptions for the Legislature and executive agencies to estimate
5 future revenue. The trigger in 15-30-140 (1) (a) (ii) MCA however, provides that
6 "general fund revenue is as recorded in the statewide accounting budgeting, and
7 human resources system using generally accepted accounting principles in
8 accordance with 17-1-102(2). No estimating is involved: the trigger amount is a
9 fiscal yearend "snapshot" of the amount of recorded state revenue using generally
10 accepted accounting principles. According to 17-1-102 (2), MCA, routine
11 accounting transactions of state government agencies throughout a fiscal year must
12 be made according to generally accepted accounting principles. The Department's
13 certification stated that the certified revenue amount differed from the revenue in
14 the state's comprehensive annual financial report, which is the report prepared
15 according to generally accepted accounting principles. Hence, the Department
16 agrees that their certification did not follow generally accepted accounting
17 principles.

18 22. The trigger must be based upon plain language of the statute unless the
19 language is ambiguous. The language is not ambiguous. The Department
20 agrees that they did not use generally accepted accounting principles to arrive at
21 the general fund revenue in accordance with the statute. Even if they had used
22 generally accepted accounting principles they did not arrive at a trigger for the
23 tax credits. (see exhibit C) .

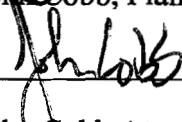
24 **Therefore Plaintiff prays for the following relief:**
25

1. For an order declaring that the Defendant did not follow 15-30-140(1)(a)(ii) MCA in using generally accepted accounting principles and therefore the trigger for the general fund revenue for the tax credits under 15-30-140(1)(a)(ii) MCA was not met.
2. That the Defendant may not include revenue based upon the error correction made after the fiscal year records were closed under the statute 15-30-140 (1)(a)(ii) MCA.
3. For such further relief as the Court may deem proper.

Respectfully submitted this 30 day of October, 2007



John Cobb, Plaintiff



John Cobb Attorney



AN ACT PROVIDING A REFUND OF UP TO A TOTAL OF \$400 OF 2006 MONTANA PROPERTY TAXES PAID BY A TAXPAYER OR TAXPAYERS ON THE RESIDENCE THAT THEY OWNED AND OCCUPIED AS THEIR PRINCIPAL RESIDENCE FOR AT LEAST 7 MONTHS DURING 2006 AND OF CERTAIN 2005 AND 2004 MONTANA PROPERTY TAXES PAID ON THE PRINCIPAL RESIDENCE; PROVIDING THE PROCEDURE FOR ESTABLISHING ENTITLEMENT TO THE REFUND AND THE PERIOD WITHIN WHICH THE ENTITLEMENT MUST BE ESTABLISHED; ALLOWING A REFUNDABLE INCOME TAX CREDIT FOR THE AMOUNT OF PROPERTY TAXES PAID ON \$20,000 OF MARKET VALUE OF A PRINCIPAL RESIDENCE ATTRIBUTABLE TO THE 95-MILL STATEWIDE LEVIES TO FUND SCHOOLS; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 15-1-201 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Montana property taxes" means the ad valorem property taxes imposed on property classified under 15-6-134 that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that were assessed in the specified calendar year.

(2) "Owned" includes purchasing under a contract for deed, owning 20% or more of the shares or other membership interests of an entity that owns a residence, and being the grantor or grantors under a trust indenture.

Section 2. Property tax refund -- manner of claiming -- limitations -- appropriation. (1)(a) A refund of up to \$400 of 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006 may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3).

(b) If the 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006 were more than \$25 and less than \$400, a refund of the 2005 Montana property taxes assessed to and paid by the taxpayer or taxpayers on the principal residence, if they owned and occupied it as their principal residence for at least 7 months during 2005, may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3), in an amount that together with the refund under subsection (1)(a) does not exceed \$400.

(c) If the 2006 Montana property taxes assessed to and paid by a taxpayer or taxpayers on the residence that they owned and occupied as their principal residence for at least 7 months during 2006, together with the 2005 Montana property taxes allowed as a refund under subsection (1)(b), were more than \$50 and less than \$400, a refund of the 2004 Montana property taxes assessed to and paid by the taxpayer or taxpayers on the principal residence, if they owned and occupied it as their principal residence for at least 7 months during 2004, may be claimed as provided in subsection (2), subject to the limitations provided in subsection (3), in an amount that together with the refund under subsections (1)(a) and (1)(b) does not exceed \$400.

(2) (a) Subject to subsection (2)(b), the claim for refund, in the form that the department prescribes, must be executed by each taxpayer under penalty of false swearing and must include the information that the department requires.

(b) The personal representative of the estate of a deceased taxpayer may execute and file the claim for refund on behalf of a deceased taxpayer who qualifies for the refund.

(3) The claim for a refund is subject to the following limitations:

(a) The claim must be filed with the department of revenue on or before December 31, 2007, unless the department, for good cause shown, grants a reasonable extension of time for filing.

(b) Only one claim may be made with respect to any property.

(c) The claims by a taxpayer or taxpayers for 2006, 2005, and 2004 must be for the same property.

(4) The payment of property tax refunds under this section is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of revenue for distribution to taxpayers.

Section 3. Property tax refund -- penalty for false or fraudulent claim. A person who files a false or fraudulent claim for a property tax refund under [section 2] is subject to criminal prosecution under the provisions of 45-7-202. If a false or fraudulent claim has been paid, the amount paid may be recovered as any

other tax owed the state, together with a penalty of 25% and interest on the amount of the refund at the rate of 12% a year, until paid.

Section 4. Section 15-1-201, MCA, is amended to read:

"15-1-201. Administration of revenue laws. (1)(a) The department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapters 70 and 71, and over any officers of municipal corporations having any duties to perform under the laws of this state relating to taxation to the end that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) In the administration of any tax over which it has general supervision, the department may require all individuals subject to the tax laws of the state to provide to the department the individual's social security number, federal employee identification number, or taxpayer identification number.

(b)(c) The department may contract with the U.S. department of the interior or any other federal agency to perform federal royalty audits, collection services, and any other delegable functions related to mining operations on federal lands within the state pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

(e)(d) The department shall adopt rules specifying which types of property within the several classes are considered comparable property as defined in 15-1-101.

(d)(e) The department shall also adopt rules for determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information, in a form prescribed by the department, about the assessment of property, collection of taxes, receipts from licenses and other sources, expenditure of public funds for all purposes, and other information as may be necessary and helpful in the work of the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and to aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered necessary or helpful."

Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; ~~and 90-9-306;~~ and [section 2].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates

July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 6. Refundable income tax credit -- statewide equalization property tax levies on principal residence -- rules. (1) (a) There is a credit against the tax imposed by this chapter, which is calculated by multiplying the amount of property taxes imposed and paid on a property taxpayer's principal residence under 20-9-331, 20-9-333, and 20-9-360 on \$20,000 of market value on the residence times the relief multiple.

(b) (i) As used in subsection (1)(a), the relief multiple is a number used to change the amount of tax relief allowed under this section. The relief multiple is 0. Each interim, the revenue and transportation interim committee shall, based upon actual and projected state revenue and spending and any other appropriate factors, determine if a change in the relief multiple is justified. If a change is justified, the committee shall request a bill to change the relief multiple.

(ii) The department of administration shall certify to the budget director on August 1, 2007, the amount of unaudited general fund revenue received in fiscal year 2007 as recorded when the fiscal year 2007 statewide accounting, budgeting, and human resources system records are closed in July 2007. Fiscal year 2007 is the period from July 1, 2006, to June 30, 2007. General fund revenue is as recorded in the statewide accounting, budgeting, and human resources system using generally accepted accounting principles in accordance with 17-1-102(2). If the unaudited general fund revenue received in fiscal year 2007 exceeds \$1,802,000,000, for each \$1,000,000 greater than \$1,802,000,000, the factor in subsection (1)(b)(i) must increase by 0.1 for tax year 2007 only.

(2) As used in this section, "principal residence" means a class four residential dwelling that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home and as much of the surrounding land, not exceeding 1 acre, as is reasonably necessary for its use as a dwelling and that is occupied by the owner for at least 7 months during the tax year.

(3) Only one claim may be made with respect to any property.

(4) If the amount of the credit exceeds the claimant's liability under this chapter, the amount of the excess must be refunded to the claimant. The credit may be claimed even if the claimant has no income taxable

under this chapter.

(5) The department may adopt rules to implement and administer this section.

Section 7. Appropriation. There is appropriated to the department of revenue \$1,028,863 from the general fund for the administration of the property tax refund provided in [section 2] for the 2009 biennium.

Section 8. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 6].

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Termination. [Section 5] terminates July 1, 2008.

- END -

DEPARTMENT OF ADMINISTRATION
DIRECTOR'S OFFICE



BRIAN SCHWEITZER, GOVERNOR

JANET R. KELLY, DIRECTOR

STATE OF MONTANA

(406) 444-2032
FAX (406) 444-6194

MITCHELL BUILDING
125 N. ROBERTS, RM 155
PO BOX 200101
HELENA, MONTANA 59620-0101

MEMORANDUM

TO: David Ewer, Budget Director
Office of Budget and Program Planning

FROM: Janet R. Kelly, Director
Department of Administration

RE: Certification of Fiscal Year 2007 General Fund Revenue

DATE: July 27, 2007

I certify that the fiscal year 2007 general fund unaudited revenue is \$1,838,053,331, which includes an error that was discovered after the records were closed in July 2007.

This amount is based on the assumptions underlying the estimates used to make the "official" legislative general fund revenue estimate that is used for making all financial policy decisions for the State of Montana.

This amount differs from the unaudited general fund revenue used in the preparation of the state's comprehensive annual financial report (CAFR) due to different definitions of revenue.

cobb ranch

From: Johnson, Terry [tjohnson@mt.gov]
Sent: Thursday, October 18, 2007 9:44 AM
To: cobbchar@3rivers.net
Cc: Schenck, Clayton; Johnson, Terry
Subject: FW: FY 07 Closed

Senator Cobb ...

The following is a trail of emails dealing with the target. The email below from Paul Christofferson (who is the state accountant from the Department of Administration) did the calculation of GAAP revenue. As you can see from below, the number he provided was 1,769,007,440 for total fiscal 2007 revenues per the definition of GAAP (Generally Accepted Accounting Principles). Paul is responsible for state accounting policies and he and his staff prepare the state's financial statements. As you can see, he made it very clear in his first sentence that the calculation must be based on GAAP revenues. The certification letter our office received a few days later made no reference to the \$1,769,007,440 amount.

J ...

From: Christofferson, Paul (DOA)
Sent: Monday, July 23, 2007 1:07 PM
To: Johnson, Terry
Cc: Feldman, Julie (DOA); Schenck, Clayton
Subject: RE: FY 07 Closed

his calculation must be based on GAAP Revenues. GAAP revenues were \$1,769,007,440. You do not include transfers, proceeds of general fixed asset disposition and inception of lease amounts in the GAAP revenue amount. I will send the official memos to you as soon as they are ready.

From: Johnson, Terry
Sent: Monday, July 23, 2007 11:47 AM
To: Feldman, Julie (DOA)
Cc: Schenck, Clayton; Johnson, Terry; Christofferson, Paul (DOA)
Subject: RE: FY 07 Closed

Julie ...

For past years, either Paul or you have sent me a preliminary reconciliation between SABHRS and GAAP fund balance. Would you send that to me electronically as soon it is available? Also, per HB9 of the special session, DOA is required to certify to the budget director by August 1, 2007 how much general fund revenue exceeded \$1.802 billion. Would you also send a copy of that certification to me also. According to the queries I have run, total general fund revenues were \$1,836,302,685 for fiscal 2007.

J ...

From: Feldman, Julie (DOA)
Sent: Friday, July 20, 2007 4:42 PM
To: DOA ACCT CAFR; DOA ACCT FYE
Cc: Ewer, David; Gillett, Jim; Allen, Pearl; Norris, Laura; Johnson, Terry; Larson, Marla
Subject: FY 07 Closed

Thanks for all your hard work. The closing processes have been completed in regard to FY07, this includes the Data Mine.

The monthly reports will be processed as normal during the nightly batch processes. Thus, they will not be available until Monday morning.

As a reminder, maintenance on the mainframe is scheduled for Saturday the 21st and maintenance on SABHRS is scheduled for Sunday the 22nd.

*Julie Feldman, Accounting Bureau Chief
Administrative Financial Service Division
Montana Department of Administration
Text (406) 444 - 3094 Fax (406) 444 - 2812*